

United States Bankruptcy Court
For the Eastern District of North Carolina

In re:
Caremerica, Inc.
Debtor

Case Number: 06-02913-8-JRL

James B. Angell, Chapter 7 Trustee
Plaintiff

Adversary Proceeding Case Number:
08-00174-8-JRL

v

BER CARE, INC., f/k/a PPS, Inc.,
Adcar, Inc., Ann H. Day, Antonia P. Elliott
Antonia Ferrara, Joseph Alex Cannon Jr.,
Cher Cannon, Diversified Enterprises, Inc.
d/b/a Cannon Construction, Cape Associates,
L.L.C., Capital Resource Solutions, LLC,
Carolina Care, LLC, City of Kinston,
City of Wilson, Crescent State Bank,
DeltaCom, Inc., Dona H. Burrell,
First Eastern, LLC, GEMSA Loan Services,
Limited Partnership, Institution Food
House, Inc., Institutional Services, L.L.C.,
Jette Ferrell, John F. Smith III,
Joshua Houghton, National Assisted Living
Risk Retention Group and/or
Rinklin-Shuttleworth of Georgia, LLC,
Opesnet Corporation, Pachki, Incorporated,
d/b/a Andy Anderson Agency, Pinewood
Associates, a General Partnership and/or
Pinewood of Pink Hill, LLC, Powell Properties
of Durham County, LLC Red Mortgage Capital,
Inc., Robert D. Shelley, Dawn O. Roland and/or
Walter D. Rowland, Sandra Etheridge, Stanley
E. Brunson, Jr., Susan W. Simms, WFY, LLC,
Robert D. Shelley d/b/a WYC, LLC and/or
Ed Prince d/b/a WYC, LLC
Defendants

Motion to Dismiss of Defendants
First Eastern, LLC and
Powell Properties of
Durham County, LLC

Defendants First Eastern, LLC and Powell Properties of Durham County, LLC move the court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Rule 7012 of the Federal Rules of Bankruptcy Procedure, to dismiss this adversary proceeding for failure to state a claim upon which relief can be granted.

These defendants are filing a memorandum of even date setting forth defendants' argument in support of this motion.

This the 4th day of November, 2008.

Fields & Cooper, PLLC
Attorneys at Law
P. O. Box 4538
Rocky Mount, NC 27803
Telephone: (252) 442-3115

s/John S. Williford, Jr.
John S. Williford, Jr.
North Carolina Bar No. 7395
Attorney for Defendants First Eastern, LLC
and Powell Properties of Durham County, LLC
P.O. Box 4538
Rocky Mount, NC 27803

Certificate of Service

I, the undersigned, do hereby certify that a true copy of the foregoing motion to dismiss was this day served on the other parties by placing a true copy thereof in an envelope, which envelope was then sealed and postage thereon fully prepaid, and on this day said envelope was thereafter deposited in an official depository of the United States Postal Service under the exclusive care and custody of the United States Postal Service, said envelope being properly addressed to the attorney of record of the other parties as follows:

James B. Angell, Esq.
Howard, Stallings, From & Hutson, P.A.
P.O. Box 12347
Raleigh, NC 27605

Philip W. Paine, Esq.
Howard, Stallings, From & Hutson, P.A.
P.O. Box 12347
Raleigh, NC 27605

C. Christopher Smith, Esq.
4850 Fayetteville Road, Suite C
Lumberton, NC 28358-2100

David W. Long, Esq.
3600 Glenwood Avenue
Raleigh, NC 27612

William P. Janvier, Esq.
Everett Gaskins Hancock & Stevens, LLP
P.O. Box 911
Raleigh, NC 27602

Michael P. Peavey, Esq.
P.O. Box 1115
Wilson, NC 27894

John A. Northen, Esq.
Northen Blue, LLP
P.O. Box 2208
Chapel Hill, NC 27515-2208

Patrick Donovan Riley, Esq.
Rose Rand Attorneys, P.A.
P.O. Drawer 2367
Wilson, NC 27894-2367

Christopher T. Graebe, Esq.
Graebe Hanna & Welborn, PLLC
4350 Lassister at North Hills, Suite 375
Raleigh, NC 27609

Douglas Hanna, Esq.
Graebe Hanna & Welborn, PLLC
4350 Lassister at North Hills, Suite 375
Raleigh, NC 27609

James Oliver Carter, Esq.
Carter & Carter, P.A.
408 Market Street
Wilmington, NC 28401

J. Samuel Gorham, III, Esq.
Gorham, Crone, Mace, Green & Cody LLP
P.O. Box 2507
Hickory, NC 28603

Algernon L. Butler, Jr., Esq.
Butler & Butler, L.L.P.
P.O. Box 38
Wilmington, NC 28402

Robert K. Imperial, Esq.
Williams Mullen Maupin Taylor
A Professional Corporation
P.O. Box 19764
Raleigh, NC 27619-9764

Gerald A. Jeutter, Jr., Esq.
P.O. Box 12585
Raleigh, NC 27605-2585

William E. Brewer, Jr.
The Brewer Law Firm
619 N. Person Street
Raleigh, NC 27604

Bettie Kelley Sousa, Esq.
Smith Debnam
P.O. Drawer 26268
Raleigh, NC 27611-6268

Paul A. Fanning, Esq.
P.O. Box 8088
Greenville, NC 27835-8088

Stephen G. Inman, Esq.
P.O. Drawer 53007
Fayetteville, NC 28305-3007

David L. Ray, Esq.
Fletcher, Ray & Satterfield, LLP
131 Racine Drive, Suite 201
Wilmington, NC 28403

Stephen L. Beaman, Esq.
P.O. Box 1907
Wilson, NC 27894

and to the parties named below as follows:

Antonia P. Elliot
1964 Cane Branch Road
Loris, SC 29569

Cape Associates, LLC
P.O. Box 5339
Sarasota, FL 34277

Capital Resource Solutions, LLC
P.O. Box 809
Clayton, NC 27520

Crescent State Bank
c/o Michael G. Carlton, registered agent
P.O. Box 5809
Cary, NC 27512

GEMSA Loan Services, Limited Partnership
c/o CT Corporation System, registered agent
225 Hillsborough Street
Raleigh, NC 27603

Institutional Services, L.L.C.
c/o Harry W. Haskins, registered agent
3400 S. Tamiami Trail, Suite 201
Sarasota, FL 34277

John F. Smith, III
26 Highwood Circle
Murrells Inlet, SC 29576-9770

National Assisted Living Risk Retention Group
Attn: Linda S. Nethery
Ranklin-Shuttleworth of Georgia LLC
5696 Peachtree Pkwy., Suite A
Norcross, GA 30092

Rinklin-Shuttleworth of Georgia, LLC
c/o Jeffrey L. Cohen, registered agent
3530 Rivermood Parkway, Suite 2220
Atlanta, GA 30339

Pachki, Incorporated
d/b/a Andy Anderson Agency
c/o Andrew Alfred Anderson, registered agent
2290 South Bay Street
Eustis, FL 32726

Red Mortgage Capital, Inc.
c/o Csc-Lawyers Incorporating Services
(Corporation Service Company), registered agent
50 W Broad Street, Suite 1800
Columbus, OH 43215

WFY, LLC
Attn: Robert Shelley, registered agent
1573 Pine Island Road
Myrtle Beach, NC 29577

Ed Prince
d/b/a WYC, LLC
2011 Ye Olde Kings Hwy.
N Myrtle Beach, SC 29582

This the 4th day of November, 2008.

Fields & Cooper, PLLC

By: s/John S. Williford, Jr.

P.O. Box 4538

Rocky Mount, NC 27803

Attorneys for Defendants First Eastern, LLC and Powell Properties of Durham County, LLC